

CT 03-3

Tax Type: Cigarette Tax

Issue: Possession of Unstamped Cigarettes

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

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| THE DEPARTMENT OF REVENUE |) | Docket No. | 0000-0000-0-00 |
| OF THE STATE OF ILLINOIS, |) | IBT No. | 0000-0000 |
| v. |) | John E. White, | |
| JOHN DOE |) | Administrative Law Judge | |

RECOMMENDATION FOR DISPOSITION

Appearances: Gary Stutland, Special Assistant Attorney General,
appeared for the Illinois Department of Revenue; John Doe,
appeared *pro se*.

Synopsis:

This matter arose after the Illinois Department of Revenue (“Department”) seized 4,282 packages of cigarettes from the Illinois residence of John Doe (“Doe”) on July 11, 2000. The Department thereafter notified Doe that a hearing would be held to determine whether those cigarettes were subject to forfeiture pursuant to § 18a of the Cigarette Tax Act (“CTA”), and whether Doe was liable for a penalty pursuant to § 18b of the CTA.

A hearing was held at the Department’s Office of Administrative Hearings in Chicago. I have considered the evidence and arguments presented at hearing, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the Director order the cigarettes forfeit, and that he assess a penalty against Doe in the amount of \$15 for each package over 100.

Findings of Fact:

1. On July 11, 2000, agents from the Department’s Bureau of Criminal Investigation

- (“BCI”) and agents from the United States Bureau of Alcohol, Tobacco and Firearms (“BATF”) executed warrants issued to search Doe’s Illinois residence and his vehicles, and a warrant authorizing Doe’s arrest. Department Ex. 1, p. 3.
2. During the execution of the warrant to search Doe’s residence, agents located and seized a total of 4,182 packages of cigarettes which, at the time of their seizure, did not bear Illinois tax stamps as required by the CTA. Department Ex. 1, p. 3, 6.
 3. Following his arrest, and after being advised of his constitutional rights, Doe agreed to speak with the BCI and other agents. Department Ex. 1, pp. 3-4.
 4. Doe told the officers that he buys cigarettes from retail stores in state other than Illinois, and that he then resells them to different stores in Chicago and elsewhere. Department Ex. 1, pp. 3-4.
 5. Doe is not an Illinois licensed cigarette distributor. Department Ex. 1, p. 1.

Conclusions of Law:

The issue is whether the 4,182 packages of unstamped cigarettes seized from Doe’s home shall be declared forfeit pursuant to § 18a of the CTA, and whether Doe is liable for a penalty for possessing those cigarettes pursuant to section 18b of the CTA. Section 18a of the CTA provides, in part:

After seizing any original packages of cigarettes, or cigarette vending devices, as provided in Section 18 of this Act, the Department shall hold a hearing and shall determine whether such original packages of cigarettes, at the time of their seizure by the Department, were not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages in accordance with this Act, or whether such cigarette vending devices, at the time of their seizure by the Department, contained original packages of cigarettes not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act. ...

If, as the result of such hearing, the Department shall determine that the original packages of cigarettes seized were at the time of seizure not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act, or that any cigarette vending device at the time of its seizure contained original packages of cigarettes not tax stamped or tax imprinted underneath the sealed transparent wrapper of such original packages as required by this Act, the Department shall enter an order declaring such original packages of cigarettes or such cigarette vending devices confiscated and forfeited to the State, and to be held by the Department for disposal by it as provided in Section 21 of this Act.

35 ILCS 130/18a.

Here, the Department's group exhibit one shows that, at the time they were seized from Doe's home, the cigarettes did not have Illinois tax stamps affixed to them as required by the CTA. Department Ex. 1, pp. 3-4; 35 ILCS 130/3-10. Therefore, I conclude that the cigarettes should be confiscated and forfeited to the State. 35 ILCS 130/18a.

As to the assessment of a penalty, § 18b of the CTA provides:

With the exception of licensed distributors, anyone possessing cigarettes contained in original packages which are not tax stamped as required by this Act, or which are improperly tax stamped, shall be liable to pay, to the Department for deposit in the State Treasury, a penalty of \$15 for each such package of cigarettes in excess of 100 packages. Such penalty may be recovered by the Department in a civil action.

35 ILCS 130/18b.

Section 13 of the CTA creates statutory presumption that anyone other than a licensed cigarette distributor who possesses unstamped cigarettes in Illinois possesses such cigarettes in violation of the CTA. 35 ILCS 130/13. Based on the additional evidence admitted at hearing, including the statement Doe made at the time of his arrest, I

conclude that Doe knowingly possessed cigarettes that did not contain Illinois tax stamps, as required by Illinois law. 35 **ILCS** 130/18b.

Conclusion:

I recommend that the Director confiscate and declare the 4,182 cigarettes forfeit to the State. 35 **ILCS** 130/18a. I further recommend that Doe be found liable for a penalty in the amount of \$62,730.00 ($4,182 \times 15 = 62,730$). 35 **ILCS** 130/18b.

Date: 5/21/2003

John E. White
Administrative Law Judge